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N8 Pharmaceuticals, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

N8 MEDICAL, INC.

Plaintiff,

and

BRIGHAM YOUNG UNIVERSITY,

Plaintiff-Intervenor.

v.

COLGATE-PALMOLIVE COMPANY,

Defendant.

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N8 PHARMACEUTICALS, INC.,

Proposed Intervenor.

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**INTERVENOR N8  
PHARMACEUTICAL, INC.'S  
RESPONSE IN OPPOSITION TO N8  
MEDICAL, INC.'S MOTION FOR  
LEAVE TO FILE SUR-REPLY**

Case No. 2:13-cv-01017-BSJ

Proposed Intervenor N8 Pharmaceutical, Inc. ("N8 Pharma") hereby opposes the motion of N8 Medical, Inc. ("N8 Medical") for leave to file a sur-reply (Dkt # 123).

With every document it files in this Rule 24 motion process, N8 Medical demonstrates precisely why it does not and cannot adequately represent the interests of N8

Pharma in this case. N8 Medical now claims that N8 Pharma has raised new issues in its Reply that should allow N8 Medical to file a sur-reply. However, the “new matters and arguments” N8 Medical claims it should be allowed to respond to are N8 Pharma’s reasonable elaborations upon arguments N8 Pharma clearly raised in its motion and its proposed complaint. Moreover, the issues are directly related to N8 Medical’s wholly unsupported adversarial attack upon N8 Pharma’s rights, as set forth in N8 Medical’s opposition to N8 Pharma’s Amended Motion to Intervene (Dkt # 106). At the time N8 Medical filed its opposition, N8 Medical was well aware of the position of N8 Pharma, the parties having exchanged numerous emails in which these very issues were discussed at length. The issues N8 Medical claims are “new matters and arguments” are not new at all to N8 Medical. However, instead of addressing the issues arising out of the respective licenses, N8 Medical instead chose to completely ignore those documents in its opposition. That was N8 Medical’s conscious choice. Obviously, N8 Medical has changed its mind now. That change of mind does not give N8 Medical the right to a sur-reply. For these reasons, N8 Pharma opposes a sur-reply.

DATED September 16, 2014

SMITH LC

/s/ Richard R. Thomas

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed with the Court on this 16th day of September, 2014 and served via ECF on all parties who have requested notice:

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